XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(14)

मामला क्रमांक Cr.A. No. 1137 सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No. 1137 /2001

APPELLANT Puniram @ Gumdiha s/o Tike Satnami, aged 50 years, r/o village Chhote Gumda, P.S. Ghargoda at present r/o Girddu Pali, P.S. Baramkela, Tahsil Sarangarh, Distt. Raigarh (C.G)

Versus

RESPONDENT State of Chhattisgarh

CRIMINAL APPEAL u/s 374 OF THE CODE OF CRIMINAL PROCEDURE

D.B.: HON'BLE SHRI L.C. BHADOO, J, &
HON'BLE SHRI SUNIL KUMAR SINHA, J.

Appearance:

Shri Y.V. Ramanrao, counsel for the appellant.

Shri U.K.S. Chandel, Panel Lawyer, for the State.

ORAL JUDGMENT
(28.09.2007)

The following judgment was delivered by

L.C. Bhadoo, J:-

This appeal is directed against the judgment of conviction and order of sentence dated 26.9.2001 passed by the III Additional Sessions Judge, Raigarh, (FTC), in Sessions Trial No.25/2001, whereby, the learned Additional Sessions Judge after holding the accused/appellant guilty of the offence punishable under Section 302 of IPC, for committing murder of his second wife namely Jamuna Bai, sentenced him to undergo imprisonment for life.

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आदेश पत्रक (पूर्वानुबद्ध)

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(2) The case of the prosecution in brief is that Jamuna Bai was the second wife of the accused who married her in a bangle marriage. The accused left the service from the colliery and started residing in his in-laws village i.e., Girhulpali. About 4-5 months prior to the date of incident on account of differences between the accused and the deceased the accused deserted the deceased. On 07.12.2000 Jamuna Bai was cooking meal at her residence and she was about to serve the food to her mother, at that time accused came and asked Jamuna Bai to accompany him. However, Jamuna refused to accompany the accused; on which, the accused attacked Jamuna with an Axe on her neck and committed her murder and ran away. The *merg* intimation Ex.P.1 of the incident was given by Dadu Ram (P.W.1) in the police Station, Baramkela. He also gave the First Information Report Ex.P.2 in the police station Baramkela. After registering the offence u/s 302 IPC, the investigating officer left for the scene of occurrence and after giving notice Ex.P.4 to the *Panchas*, prepared inquest Ex.P.5 on the body of Jamuna Bai. He seized the clothes of the deceased under Ex.P.3. The site plan Ex.P.6 was prepared by him on the place of occurrence. Under Ex.P.7 he seized the blood stained soil, plain soil as also the broken pieces of bangles. One Rin Pustika, one stamp in the name of accused and the bunch of keys, one razor, alongwith Plastic bag left by the accused at the place of occurrence were also seized under Ex.P.7. The body of deceased was sent for postmortem examination to the Assistant Surgeon, Baramkela where P.W.7 Dr. Kamleshwar Maravi conducted the autopsy on the body of Jamuna Bai. He opined that

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the cause of death was due to shock caused by extensive hemorrhage, bony injury and the injury on the spinal cord. The death was homicidal in nature. He prepared postmortem report Ex.P.9. Based on the memorandum Ex.P.10 given by accused Puniram, the weapon of offence i.e., Axe was seized under Ex.P.11. The clothes of the accused were seized under Ex.P.12. After completion of the investigation, charge sheet was filed in the Court of J.M.F.C., Sarangarh, who in turn committed the case to the Sessions Judge, Raigarh, from where the learned III Addl. Sessions Judge, received the case on transfer for trial.

(3) The prosecution in order to establish the charges against the accused, examined 8 witnesses. The statement of the accused was recorded under section 313 Cr.P.C., in which he denied the material appearing against him and stated that the deceased was his second wife, to whom he married in a bangle marriage and about six months prior to the date of incident she was divorced under a written agreement, he is innocent and has been implicated in a false case.

(4) The learned Addl. Sessions Judge after hearing the counsel for the parties respective, convicted and sentenced the accused appellant as aforesaid.

(5) We have heard Shri Y.V. Raman Rao, learned counsel for the appellant and Shri U.K.S.Chandel, learned Panel Lawyer, for the State.

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आदेश पत्रक (पूर्वानुबद्ध)

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(6) Learned counsel for the accused appellant has not disputed the homicidal death of Jamuna Bai. Moreover, Dr. Kamleshwar Maravi (P.W.7) has stated that on 7.12.2000 he conducted the postmortem on the body of Jamuna Bai, there was a bruise wound on the middle part of the left fore arm. There was an incised wound on the left side of the neck in size of 2" x ½" x 2", another incised wound on the left side of the neck in size of 3" x ½" 1½", Clotted blood was present. The jugular vein and artery was cut. Cervical bone was also cut. The ulna bone of the left arm was fractured. The cause of death was shock, hemorrhage and injury to the neck and spinalcord. The death was homicidal in nature. Apart from that, the medical evidence is corroborated by the ocular evidence of P.W.2 Tiharin Bai, who has stated that the accused attacked the deceased with the Axe. Therefore, in view of the above ocular and medical evidence it is established that the death of Jamuna Bai was homicidal in nature.

(7) As far as the involvement of the accused in crime in question is concerned, learned counsel for the appellant argued that in this case, the prosecution has failed to examined the Investigating officer, therefore, the accused is entitled for acquittal. He also argued that the independent witnesses have not been examined in this case, only close relatives of the deceased namely Tiharin Bai (P.W.2), Dadu Ram(P.W.1) and Udal (P.W.6) have been examined and their evidence does not inspire confidence and in the absence of independent witnesses, reliance cannot be placed on the evidence of these relative witnesses.

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आदेश पत्रक (पूर्वानुबद्ध)

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(8) On the other hand, learned State Counsel supported the judgment of the trial court.

(9) Having heard counsel learned for the parties, in order to appreciate the arguments advanced by learned counsel for the appellant, we have scrutinized the evidence. P.W.1 Dadu Ram has stated that on 7th December, he was in his thrashing field and was thrashing the paddy. Sahbo came and informed him that Jamuna (since deceased) and Puniram (accused) were quarrelling. He went to the spot, saw that Jamuna was lying on the ground, there was cut injury on her neck and blood was oozing out of the injury. Tiharin Bai was weeping sitting near the body. He enquired from Tiharin Bai as to who has attacked, on which she replied Puni Ram has attacked on the neck of Jamuna Bai with Axe and ran away. Thereafter, search was made but whereabouts of the accused could not be known. Therefore, he went to the police station Baramkela and lodged the report Ex.P.1. In para 4 he has stated that the accused divorced Jamuna Bai 2-3 months prior to the date of incident through a written letter. The deceased was his cousin sister. He informed about the incident to the Sarpanch and Upsarpanch of the village also. P.W.2 Tiharin Bai, mother of the deceased has stated that the accused is her son-in-law and Jamuna Bai, deceased was her daughter. The accused married Jamuna Bai in a bangle marriage. On the fateful day at about 10-11 a.m., the accused came to their residence, at that time, Jamuna and her daughter-in-law Usha Bai were at the residence. Jamuna was cooking meal and she was sitting in the court yard. The accused came and attacked Jamuna on her neck with an axe, as a

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result of which, she fell down and blood started oozing out of the injury. The accused rushed towards her also; therefore, she raised cries on which Sahabo, Udal and Daduram came. Dadu Ram enquired from her about the incident, therefore, she disclosed to him also. Hira Bai has been examined as P.W.3 who is said to have witnessed the incident, but her evidence is improved for the reason that in her police case diary statement Ex.P.1, she has not stated that she witnessed the incident. Therefore, her evidence is of no help to the prosecution. P.W.6 Udal has stated that on the fateful day he was thrashing the paddy crop in the thrashing field, at that time Usha Bai came and informed him that the accused has attacked the deceased with axe on her neck, thereafter, he reached to the spot where Jamuna was lying, the blood was oozing out of the injury. He saw that the accused was running away from the place carrying axe in his hand. He along-with other villagers chased the accused but they could not catch him.

(10) Now coming to the argument of learned counsel for the appellant that the Investigating Officer has not been examined, in fact the I.O. has not been examined but merely on this ground the case of the prosecution cannot be thrown out and the same has to be decided based on the evidence available on record. Unless it is shown that non-examination of the I.O., is fatal to the prosecution case or the same has caused prejudice to the accused because on account of his non examination, he has not been able to elicit the relevant facts, which could have been ascertained only from the I.O., it cannot be said that non examination of I.O. is fatal to the prosecution. Except that I.O. has not been examined, learned

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counsel for the appellant has not raised any point that how non examination of the I.O. is fatal to prosecution case or how the same has caused prejudice to the appellant. Therefore, we do not find any substance in the arguments of learned counsel for the appellant.

(11) As far as the witnesses who are close relatives of the deceased are concerned, it is true that P.W.2 is mother of the deceased and P.W.1 is cousin brother of the deceased. The evidence of the relative witnesses cannot be out-rightly rejected merely on the ground of relative witnesses. In such a case, the evidence has to be scrutinized with great care and circumspection in order to ascertain the truthfulness of their version. P.W.6 Udal is also a distant relative. On the scrutiny of the evidence of these 3 witnesses, it shows that P.W.2 Tiharin has claimed herself to be an eye witness to the incident and she has stated that at the time of incident, she was sitting in the house whereas Jamuna was busy in cooking the meals, at that time accused came with an axe and attacked the deceased, thereafter he rushed towards her also, on which she raised cries and at that time Sahabo, Udal and Dadu also came. Dadu has been examined as P.W.1 who has stated that when he came to know about the incident from Sahabo, he reached on the spot and saw the injured Jamuna, Tiharin was weeping and sitting there and there was an injury on the neck of Jamuna, on enquiry, Tiharin disclosed that the accused has attacked with the Axe. Similarly P.W.6 Udal stated that Usha Bai, daughter-in-law of Tiharin (P.W.2) informed him about the incident, he also came on the scene. He has further stated that he

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saw Jamna lying in an injured condition and he saw the accused running away carrying axe in his hand. He along-with the villagers chased him but they could not catch him, therefore, the evidence of eye witness namely P.W. 2 Tehrin Bai has been corroborated in material particulars by these two witnesses because as per the evidence of P.W.1 Dadu when he reached the spot, Tiharin has disclosed that the accused attacked the deceased. Moreover, the F.I.R. Ex.P.2 lodged by this witness within 1½ hours corroborates the fact of complicity of accused in crime in question whereas P.W.6 Udal has categorically stated that when he reached, he saw the accused running away holding the axe in his hand. In the cross examination of these 3 witnesses, the defence has not been able to elicit any circumstance which materially discredit the evidence of these 3 witnesses. The presence of Tiharin Bai P.W.2 at her residence at the time of incident that is about 11 a.m. in the morning was but natural. She is an old lady of 62 years of age.

(12) Moreover, the evidence of Tiharinbai is also corroborated by the medical evidence of P.W.7 Dr.Kamleshwar Maravi, who has stated that on 7.12.2000 he conducted the postmortem on body of Jamuna and there were two incised wounds on the left side of the neck, as a result of which there was excessive bleeding. He has further stated that as a result of the injury, jugular vein, artery as also the cervical bone were cut and Tiharin has also stated that the accused attacked with the axe on the neck, therefore, in view of the above evidence, the prosecution has been able to establish beyond reasonable doubt that the accused was the author of the crime in question.

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	(13) As far as the non examination of Sahabo and other cited witnesses is concerned, the prosecution has been able to establish the crime against the accused based on the evidence of P.W. 2, Tiharin, P.W.1 Daduram & P.W.6 Udal and their evidence inspires the confidence of the Court. As has been discussed earlier in order to reach the conclusion whether the prosecution has been able to establish the crime beyond reasonable doubt or not, the quality of the evidence is to be seen not the quantity, therefore, in the facts and circumstances, looking to the material available on record, the non examination of other cited witnesses by the prosecution is not fatal to the prosecution. **(14)** For the foregoing reasons, we do not find any illegality or infirmity in the judgment of the trial Court. The same is based on legal, clinching and admissible evidence. The appeal being devoid of merit, the same is liable to be dismissed and it is hereby dismissed. Sd/- L.C.BHADOO Judge	Sd/- Sunil Kumar Sinha Judge
(Rao)		